

# HB3372



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

**HB3372**

by Rep. Elgie R. Sims, Jr.

#### SYNOPSIS AS INTRODUCED:

5 ILCS 140/7

from Ch. 116, par. 207

105 ILCS 5/2-3.170 new

Amends the School Code. Requires the State Board of Education to establish, or contract with a third party to establish, a Safe2Tell program to allow the anonymous reporting of information regarding potential threats to students. Sets forth objectives of the program. Sets forth requirements to disclose information collected under the program in court. Provides that knowing disclosure of information under the program is guilty of a class A misdemeanor. Amends the Freedom of Information Act to exempt information collected under the program.

LRB100 10727 MLM 20957 b

A BILL FOR

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Freedom of Information Act is amended by  
5 changing Section 7 as follows:

6 (5 ILCS 140/7) (from Ch. 116, par. 207)

7 Sec. 7. Exemptions.

8 (1) When a request is made to inspect or copy a public  
9 record that contains information that is exempt from disclosure  
10 under this Section, but also contains information that is not  
11 exempt from disclosure, the public body may elect to redact the  
12 information that is exempt. The public body shall make the  
13 remaining information available for inspection and copying.  
14 Subject to this requirement, the following shall be exempt from  
15 inspection and copying:

16 (a) Information specifically prohibited from  
17 disclosure by federal or State law or rules and regulations  
18 implementing federal or State law.

19 (b) Private information, unless disclosure is required  
20 by another provision of this Act, a State or federal law or  
21 a court order.

22 (b-5) Files, documents, and other data or databases  
23 maintained by one or more law enforcement agencies and

1 specifically designed to provide information to one or more  
2 law enforcement agencies regarding the physical or mental  
3 status of one or more individual subjects.

4 (c) Personal information contained within public  
5 records, the disclosure of which would constitute a clearly  
6 unwarranted invasion of personal privacy, unless the  
7 disclosure is consented to in writing by the individual  
8 subjects of the information. "Unwarranted invasion of  
9 personal privacy" means the disclosure of information that  
10 is highly personal or objectionable to a reasonable person  
11 and in which the subject's right to privacy outweighs any  
12 legitimate public interest in obtaining the information.  
13 The disclosure of information that bears on the public  
14 duties of public employees and officials shall not be  
15 considered an invasion of personal privacy.

16 (d) Records in the possession of any public body  
17 created in the course of administrative enforcement  
18 proceedings, and any law enforcement or correctional  
19 agency for law enforcement purposes, but only to the extent  
20 that disclosure would:

21 (i) interfere with pending or actually and  
22 reasonably contemplated law enforcement proceedings  
23 conducted by any law enforcement or correctional  
24 agency that is the recipient of the request;

25 (ii) interfere with active administrative  
26 enforcement proceedings conducted by the public body

1           that is the recipient of the request;

2           (iii) create a substantial likelihood that a  
3 person will be deprived of a fair trial or an impartial  
4 hearing;

5           (iv) unavoidably disclose the identity of a  
6 confidential source, confidential information  
7 furnished only by the confidential source, or persons  
8 who file complaints with or provide information to  
9 administrative, investigative, law enforcement, or  
10 penal agencies; except that the identities of  
11 witnesses to traffic accidents, traffic accident  
12 reports, and rescue reports shall be provided by  
13 agencies of local government, except when disclosure  
14 would interfere with an active criminal investigation  
15 conducted by the agency that is the recipient of the  
16 request;

17           (v) disclose unique or specialized investigative  
18 techniques other than those generally used and known or  
19 disclose internal documents of correctional agencies  
20 related to detection, observation or investigation of  
21 incidents of crime or misconduct, and disclosure would  
22 result in demonstrable harm to the agency or public  
23 body that is the recipient of the request;

24           (vi) endanger the life or physical safety of law  
25 enforcement personnel or any other person; or

26           (vii) obstruct an ongoing criminal investigation

1 by the agency that is the recipient of the request.

2 (d-5) A law enforcement record created for law  
3 enforcement purposes and contained in a shared electronic  
4 record management system if the law enforcement agency that  
5 is the recipient of the request did not create the record,  
6 did not participate in or have a role in any of the events  
7 which are the subject of the record, and only has access to  
8 the record through the shared electronic record management  
9 system.

10 (e) Records that relate to or affect the security of  
11 correctional institutions and detention facilities.

12 (e-5) Records requested by persons committed to the  
13 Department of Corrections if those materials are available  
14 in the library of the correctional facility where the  
15 inmate is confined.

16 (e-6) Records requested by persons committed to the  
17 Department of Corrections if those materials include  
18 records from staff members' personnel files, staff  
19 rosters, or other staffing assignment information.

20 (e-7) Records requested by persons committed to the  
21 Department of Corrections if those materials are available  
22 through an administrative request to the Department of  
23 Corrections.

24 (f) Preliminary drafts, notes, recommendations,  
25 memoranda and other records in which opinions are  
26 expressed, or policies or actions are formulated, except

1           that a specific record or relevant portion of a record  
2           shall not be exempt when the record is publicly cited and  
3           identified by the head of the public body. The exemption  
4           provided in this paragraph (f) extends to all those records  
5           of officers and agencies of the General Assembly that  
6           pertain to the preparation of legislative documents.

7           (g) Trade secrets and commercial or financial  
8           information obtained from a person or business where the  
9           trade secrets or commercial or financial information are  
10          furnished under a claim that they are proprietary,  
11          privileged or confidential, and that disclosure of the  
12          trade secrets or commercial or financial information would  
13          cause competitive harm to the person or business, and only  
14          insofar as the claim directly applies to the records  
15          requested.

16          The information included under this exemption includes  
17          all trade secrets and commercial or financial information  
18          obtained by a public body, including a public pension fund,  
19          from a private equity fund or a privately held company  
20          within the investment portfolio of a private equity fund as  
21          a result of either investing or evaluating a potential  
22          investment of public funds in a private equity fund. The  
23          exemption contained in this item does not apply to the  
24          aggregate financial performance information of a private  
25          equity fund, nor to the identity of the fund's managers or  
26          general partners. The exemption contained in this item does

1 not apply to the identity of a privately held company  
2 within the investment portfolio of a private equity fund,  
3 unless the disclosure of the identity of a privately held  
4 company may cause competitive harm.

5 Nothing contained in this paragraph (g) shall be  
6 construed to prevent a person or business from consenting  
7 to disclosure.

8 (h) Proposals and bids for any contract, grant, or  
9 agreement, including information which if it were  
10 disclosed would frustrate procurement or give an advantage  
11 to any person proposing to enter into a contractor  
12 agreement with the body, until an award or final selection  
13 is made. Information prepared by or for the body in  
14 preparation of a bid solicitation shall be exempt until an  
15 award or final selection is made.

16 (i) Valuable formulae, computer geographic systems,  
17 designs, drawings and research data obtained or produced by  
18 any public body when disclosure could reasonably be  
19 expected to produce private gain or public loss. The  
20 exemption for "computer geographic systems" provided in  
21 this paragraph (i) does not extend to requests made by news  
22 media as defined in Section 2 of this Act when the  
23 requested information is not otherwise exempt and the only  
24 purpose of the request is to access and disseminate  
25 information regarding the health, safety, welfare, or  
26 legal rights of the general public.

1           (j)    The    following    information    pertaining    to  
2    educational matters:

3           (i)    test    questions,    scoring    keys    and    other  
4    examination    data    used    to    administer    an    academic  
5    examination;

6           (ii)   information    received    by    a    primary    or  
7    secondary    school,    college,    or    university    under    its  
8    procedures    for    the    evaluation    of    faculty    members    by  
9    their    academic    peers;

10          (iii)   information    concerning    a    school    or  
11    university's    adjudication    of    student    disciplinary  
12    cases,    but    only    to    the    extent    that    disclosure    would  
13    unavoidably    reveal    the    identity    of    the    student;    and

14          (iv)   course    materials    or    research    materials    used  
15    by    faculty    members.

16          (k)    Architects'    plans,    engineers'    technical  
17    submissions,    and    other    construction    related    technical  
18    documents    for    projects    not    constructed    or    developed    in  
19    whole    or    in    part    with    public    funds    and    the    same    for  
20    projects    constructed    or    developed    with    public    funds,  
21    including    but    not    limited    to    power    generating    and  
22    distribution    stations    and    other    transmission    and  
23    distribution    facilities,    water    treatment    facilities,  
24    airport    facilities,    sport    stadiums,    convention    centers,  
25    and    all    government    owned,    operated,    or    occupied    buildings,  
26    but    only    to    the    extent    that    disclosure    would    compromise

1 security.

2 (l) Minutes of meetings of public bodies closed to the  
3 public as provided in the Open Meetings Act until the  
4 public body makes the minutes available to the public under  
5 Section 2.06 of the Open Meetings Act.

6 (m) Communications between a public body and an  
7 attorney or auditor representing the public body that would  
8 not be subject to discovery in litigation, and materials  
9 prepared or compiled by or for a public body in  
10 anticipation of a criminal, civil or administrative  
11 proceeding upon the request of an attorney advising the  
12 public body, and materials prepared or compiled with  
13 respect to internal audits of public bodies.

14 (n) Records relating to a public body's adjudication of  
15 employee grievances or disciplinary cases; however, this  
16 exemption shall not extend to the final outcome of cases in  
17 which discipline is imposed.

18 (o) Administrative or technical information associated  
19 with automated data processing operations, including but  
20 not limited to software, operating protocols, computer  
21 program abstracts, file layouts, source listings, object  
22 modules, load modules, user guides, documentation  
23 pertaining to all logical and physical design of  
24 computerized systems, employee manuals, and any other  
25 information that, if disclosed, would jeopardize the  
26 security of the system or its data or the security of

1 materials exempt under this Section.

2 (p) Records relating to collective negotiating matters  
3 between public bodies and their employees or  
4 representatives, except that any final contract or  
5 agreement shall be subject to inspection and copying.

6 (q) Test questions, scoring keys, and other  
7 examination data used to determine the qualifications of an  
8 applicant for a license or employment.

9 (r) The records, documents, and information relating  
10 to real estate purchase negotiations until those  
11 negotiations have been completed or otherwise terminated.  
12 With regard to a parcel involved in a pending or actually  
13 and reasonably contemplated eminent domain proceeding  
14 under the Eminent Domain Act, records, documents and  
15 information relating to that parcel shall be exempt except  
16 as may be allowed under discovery rules adopted by the  
17 Illinois Supreme Court. The records, documents and  
18 information relating to a real estate sale shall be exempt  
19 until a sale is consummated.

20 (s) Any and all proprietary information and records  
21 related to the operation of an intergovernmental risk  
22 management association or self-insurance pool or jointly  
23 self-administered health and accident cooperative or pool.  
24 Insurance or self insurance (including any  
25 intergovernmental risk management association or self  
26 insurance pool) claims, loss or risk management

1 information, records, data, advice or communications.

2 (t) Information contained in or related to  
3 examination, operating, or condition reports prepared by,  
4 on behalf of, or for the use of a public body responsible  
5 for the regulation or supervision of financial  
6 institutions or insurance companies, unless disclosure is  
7 otherwise required by State law.

8 (u) Information that would disclose or might lead to  
9 the disclosure of secret or confidential information,  
10 codes, algorithms, programs, or private keys intended to be  
11 used to create electronic or digital signatures under the  
12 Electronic Commerce Security Act.

13 (v) Vulnerability assessments, security measures, and  
14 response policies or plans that are designed to identify,  
15 prevent, or respond to potential attacks upon a community's  
16 population or systems, facilities, or installations, the  
17 destruction or contamination of which would constitute a  
18 clear and present danger to the health or safety of the  
19 community, but only to the extent that disclosure could  
20 reasonably be expected to jeopardize the effectiveness of  
21 the measures or the safety of the personnel who implement  
22 them or the public. Information exempt under this item may  
23 include such things as details pertaining to the  
24 mobilization or deployment of personnel or equipment, to  
25 the operation of communication systems or protocols, or to  
26 tactical operations.

1 (w) (Blank).

2 (x) Maps and other records regarding the location or  
3 security of generation, transmission, distribution,  
4 storage, gathering, treatment, or switching facilities  
5 owned by a utility, by a power generator, or by the  
6 Illinois Power Agency.

7 (y) Information contained in or related to proposals,  
8 bids, or negotiations related to electric power  
9 procurement under Section 1-75 of the Illinois Power Agency  
10 Act and Section 16-111.5 of the Public Utilities Act that  
11 is determined to be confidential and proprietary by the  
12 Illinois Power Agency or by the Illinois Commerce  
13 Commission.

14 (z) Information about students exempted from  
15 disclosure under Sections 10-20.38 or 34-18.29 of the  
16 School Code, and information about undergraduate students  
17 enrolled at an institution of higher education exempted  
18 from disclosure under Section 25 of the Illinois Credit  
19 Card Marketing Act of 2009.

20 (aa) Information the disclosure of which is exempted  
21 under the Viatical Settlements Act of 2009.

22 (bb) Records and information provided to a mortality  
23 review team and records maintained by a mortality review  
24 team appointed under the Department of Juvenile Justice  
25 Mortality Review Team Act.

26 (cc) Information regarding interments, entombments, or

1 inurnments of human remains that are submitted to the  
2 Cemetery Oversight Database under the Cemetery Care Act or  
3 the Cemetery Oversight Act, whichever is applicable.

4 (dd) Correspondence and records (i) that may not be  
5 disclosed under Section 11-9 of the Illinois Public Aid  
6 Code or (ii) that pertain to appeals under Section 11-8 of  
7 the Illinois Public Aid Code.

8 (ee) The names, addresses, or other personal  
9 information of persons who are minors and are also  
10 participants and registrants in programs of park  
11 districts, forest preserve districts, conservation  
12 districts, recreation agencies, and special recreation  
13 associations.

14 (ff) The names, addresses, or other personal  
15 information of participants and registrants in programs of  
16 park districts, forest preserve districts, conservation  
17 districts, recreation agencies, and special recreation  
18 associations where such programs are targeted primarily to  
19 minors.

20 (gg) Confidential information described in Section  
21 1-100 of the Illinois Independent Tax Tribunal Act of 2012.

22 (hh) The report submitted to the State Board of  
23 Education by the School Security and Standards Task Force  
24 under item (8) of subsection (d) of Section 2-3.160 of the  
25 School Code and any information contained in that report.

26 (ii) Records requested by persons committed to or

1           detained by the Department of Human Services under the  
2           Sexually Violent Persons Commitment Act or committed to the  
3           Department of Corrections under the Sexually Dangerous  
4           Persons Act if those materials: (i) are available in the  
5           library of the facility where the individual is confined;  
6           (ii) include records from staff members' personnel files,  
7           staff rosters, or other staffing assignment information;  
8           or (iii) are available through an administrative request to  
9           the Department of Human Services or the Department of  
10          Corrections.

11           (jj) Confidential information described in Section  
12          5-535 of the Civil Administrative Code of Illinois.

13           (kk) Information collected by the Safe2Tell program  
14          under Section 2-3.170 of the School Code.

15          (1.5) Any information exempt from disclosure under the  
16          Judicial Privacy Act shall be redacted from public records  
17          prior to disclosure under this Act.

18          (2) A public record that is not in the possession of a  
19          public body but is in the possession of a party with whom the  
20          agency has contracted to perform a governmental function on  
21          behalf of the public body, and that directly relates to the  
22          governmental function and is not otherwise exempt under this  
23          Act, shall be considered a public record of the public body,  
24          for purposes of this Act.

25          (3) This Section does not authorize withholding of  
26          information or limit the availability of records to the public,

1 except as stated in this Section or otherwise provided in this  
2 Act.

3 (Source: P.A. 98-463, eff. 8-16-13; 98-578, eff. 8-27-13;  
4 98-695, eff. 7-3-14; 99-298, eff. 8-6-15; 99-346, eff. 1-1-16;  
5 99-642, eff. 7-28-16; revised 10-25-16.)

6 Section 10. The School Code is amended by adding Section  
7 2-3.170 as follows:

8 (105 ILCS 5/2-3.170 new)

9 Sec. 2-3.170. Safe2Tell program.

10 (a) As used in this Section,

11 "In camera review" means an inspection of materials by the  
12 court, in chambers, to determine what, if any, materials are  
13 discoverable.

14 "Materials" means any records, reports, claims, writings,  
15 documents, means any records, reports, claims, writings,  
16 documents, or information anonymously reported or information  
17 related to the source of the materials.

18 "Program" means the Safe2Tell program established in this  
19 Section that provides students and the community with the means  
20 to relay information anonymously concerning unsafe,  
21 potentially harmful, dangerous, violent, or criminal  
22 activities, or the threat of these activities, to appropriate  
23 law enforcement and public safety agencies and school  
24 officials.

1       (b) The State Board of Education shall establish, or  
2 contract with a third party to establish, a Safe2Tell program  
3 to allow the anonymous reporting of information regarding  
4 potential threats to students. The program shall:

5           (1) Establish and maintain methods of anonymous  
6 reporting concerning unsafe, potentially harmful,  
7 dangerous, violent, or criminal activities, or the threat  
8 of such activities, at a school.

9           (2) Establish methods and procedures to ensure that the  
10 identity of the reporting party remains unknown to all  
11 persons and entities, including law enforcement officers  
12 and employees or other persons operating the program.

13           (3) Establish methods and procedures so that  
14 information obtained from a reporting party who  
15 voluntarily discloses his or her identity and verifies that  
16 he or she is willing to be identified may be shared with  
17 law enforcement officers, employees, or other persons  
18 operating the program, and with school officials.

19           (4) Establish methods and procedures to ensure that a  
20 reporting party's identity that becomes known through any  
21 means other than voluntary disclosure is not further  
22 disclosed.

23           (5) Promptly forward information received by the  
24 program to the appropriate law enforcement or public safety  
25 agency or school officials.

26       (c) The Safe2Tell program and persons implementing and

1 operating the program shall not be compelled to produce any  
2 materials except on the motion of a criminal defendant to the  
3 court in which the offense is being tried, supported by an  
4 affidavit establishing that the materials contain impeachment  
5 evidence or evidence that is exculpatory to the defendant in  
6 the trial of that offense.

7 If the court, after in camera review, determines that the  
8 produced materials contain impeachment evidence or evidence  
9 that is exculpatory to the defendant, the court shall order the  
10 materials to be produced to the defendant pursuant to a  
11 protective order that includes, at a minimum, the redaction of  
12 the reporting party's identity and limitations on the use of  
13 the materials, as needed, unless contrary to State or federal  
14 law any materials excised pursuant to a judicial order  
15 following the in camera review shall be sealed and preserved in  
16 the records of the court, to be made available to the appellate  
17 court in the event of an appeal. After the time for appeal has  
18 expired, the court shall return the materials to the Safe2Tell  
19 program.

20 (d) Materials created or obtained through the  
21 implementation or operation of the Safe2Tell program are  
22 confidential, and no person shall disclose the material. The  
23 Safe2Tell program and persons implementing or operating the  
24 Safe2Tell program may be compelled to produce the materials  
25 only before a court or other tribunal and only pursuant to  
26 court order for an in camera review. Any review shall be

1 limited to an inspection of materials that are material to the  
2 specific case pending before the court. The Attorney General,  
3 acting on behalf of the Safe2Tell program, shall have standing  
4 in any action to oppose the disclosure of materials in the  
5 custody of the Safe2Tell program.

6 A person who knowingly discloses confidential materials in  
7 violation of the provisions of this subsection (d) commits a  
8 class A misdemeanor.